



United States
Department of
Agriculture

Food and
Nutrition
Service

Mountain
Plains
Region

1244 Speer Boulevard
Denver, CO 80204

MAY 05 1994

Reply to
Attn. of: SFSP-235

Subject: Restrictive Award Criteria in the Summer Food Service Program (SFSP)

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Missouri DH,
(Special Nutrition Programs) Montana OPI, Nebraska ED, North Dakota,
South Dakota, Utah and Wyoming DHSS

Recently a contract between a sponsor and a food service management company (FSMC) was reviewed for compliance. The issues raised as a result of the review have prompted this policy memorandum.

As required by the SFSP, Section 225.15 (g), the sponsor used an invitation to bid to solicit FSMCs for its vended meal operations. From the information provided it was determined:

- The sponsor had divided its sponsorship into five geographic locations; and
- FSMCs were permitted to bid on one or more of the geographic locations.

The following criteria were used for FSMC selection:

- The lowest bidder may not be awarded more than two geographic locations; and
- The next lowest bidder may not be awarded more than two geographic locations; and
- The third lowest bidder may be awarded no less than one but not more than two geographic locations.

These award criteria were used even when a single FSMC was the lowest bidder in more than two geographic locations. The award criteria were not established by local ordinance, statute or under a minority-owned/small business bid set aside program. The reason for the award criteria was due to problems encountered a number of years previous when FSMC nonperformance seriously disrupted the operation of the sponsor's SFSP.

While we are sensitive to the concerns of sponsors, contracts under formal advertising must be awarded to the lowest responsible bidder. Sponsors have a variety of other protections built into the Regulations to enable them to adequately guard their financial situation from FSMC nonperformance such as vendor registration, clearly identified invitation to bid specifications and bonding.

Sponsors may subdivide their SFSP into smaller geographic areas to encourage competition, particularly when the goal is to encourage small, minority-owned, women's business enterprises and firms in labor surplus areas to bid. However, sponsors may not arbitrarily establish the number of geographic areas that may be awarded to a particular FSMC.

This policy does not require sponsors to award a contract to one FSMC when the total number of meals under the award exceed the FSMC's meal production capacity. In this situation, a SFSP sponsor is compelled under sound business practices to select an additional FSMC(s). When the selection of an additional FSMC(s) is needed, the award must be made to the next lowest bidder.

If you have any questions, please contact a member of my staff at (303) 844-0359.



for ANN C. DEGROAT
Regional Director
Special Nutrition Programs